IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.2623 OF 1999

Shri Digambar Rajaram Pardeshi

and ors. .. Petitioners

Vs

M/s Regal Trading Co. .. Respondent

Mr V.G.Muzumdar, for the petitioners.

Mr S.R.Bhalekar, for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 31st August, 2005.

PC:

1. Heard learned counsel for the parties.

2. This petition impugns the orders dated 19.1.1998 passed by the learned Civil Judge, Senior Division, on the applications filed by the petitioners for condonation of delay of 132 days and for restoration of Special Civil Suit No.1260 of 1990 to file which had been dismissed for default on 5.1.1994.

3. I perused the application seeking restoration of the suit to file, as also the application for

condonation of delay and the reply filed by the respondents. I also perused the deposition of the witness examined by the petitioners. The application for condonation of delay has been rejected by the trial Court holding that the ground mentioned in the application seeking condonation of delay and the ground mentioned in the deposition differ. The ground mentioned in the application reads thus :

> "3. In fact previously in the said suit the date 8.1.1993 was fixed for framing of issues on which date issues were framed and the next date 24.11.1993 was fixed for witness list and thereafter date 5.1.1994 was first time fixed for hearing. The advocate for the plaintiff was regularly taking the dates and attending the court and accordingly, the advocate for the plaintiff recorded the date 24.11.1993 in his diary for witness list and also taken in the same diary the further date for hearing as 5.1.1994. But while carrying forwarded the dates from diary of 1993 to the diary of 1994 inadvertently and through oversight the date of the said case as 5.1.1994 was not cared. Hence, the said date remained unattended and unmentioned by the advocate for the plaintiff."

The witness examined by the petitioners, however, has stated that he and his counsel both were not keeping well and, therefore, they could not attend the date of hearing. It is true that there is a variance in the reason mentioned in cthe application and in the

deposition. However, the reason stated in the application appears to be more probable. It is well settled that it is a duty of the lawyer to attend the proceedings and take dates and not the job of his client Once an advocate is engaged for conducting the proceedings on behalf of his client, the advocate is expected to keep himself fully informed of the proceedings in the Court and attend the case when called out or fixed. The litigant cannot be said to have any responsibility after having engaged the services of an advocate and Vakalatnama is filed on his behalf, to attend the Court on every date unless his presence becomes indispensable. It is not the case that the petitioner in the present petition was directed by the Court or was specifically asked by his advocate to remain present on 5.1.1994 and that he did not remain present on that date. Looking to the fact that the Advocate and the petitioners were otherwise regularly attending the dates of hearings and they filed the application for restoration immediately after they came to know about dismissal of the suit, in my opinion, this petition deserves to be allowed with direction to the trial Court to dispose of the suit on merits. Hence, the following order.

4. The writ petition is allowed with cost of Rs.500/- to be paid to the respondent within eight weeks from today. The delay in filing the restoration application is condoned. On payment of the cost of Rs.500/-, the restoration application will also stand allowed and as a consequence thereof the Special Civil Suit No.1260 of 1990 shall stand restored to file. The trial Court shall dispose of the said suit on merits in accordance with law as expeditiously as possible and preferably within a period of one year from today.

. Certified copy expedited.

(D.B.BHOSALE, J.)